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Supreme Court, U.S.

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In The
Supreme Court of the United States

DAVID R. SINA AND
CANDICE M. SINA,

Petitioners,

v.

FRANK T. MABLEY, an individual,
"et al",

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH DISTRICT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Foundational for a State Board of Law Examiners to hear, rule and decide on any bar examination or bar admission-matter is subject matter jurisdiction. It is also foundational for the courts to comply with the clear requirements of the Federal Rules of Civil Procedure. Both the district court and court of appeals overlooked these fundamental principles of law in ruling on Petitioners' RICO and 42 USC 1983 causes of action against Respondents. A grant of certiorari in this case is sought because of a departure from the accepted course of judicial proceedings, thereby warranting an exercise of the Court's supervisory powers. The questions presented are:

1. Whether the State Board of Law Examiners and it's director acted in clear absence of jurisdiction; thereby depriving them of 1) absolute quasi judicial immunity; 2) being represented by the Attorney General; and, thus, allowing Petitioners to have default judgment against Respondents State Board of Law Examiners and it's Director.

2. Whether the Court should exercise it's supervisory powers to enforce the Federal Rules of Civil Procedure where the United States District Court and the 8th. Circuit Court of Appeals disregarded the clear requirements of F.R.C.P. 8 and 12 (b); thereby allowing Petitioners to have default judgment against Respondents Mabley and Greenstein, Mabley and Wall, LLC.

LIST OF PARTIES BEFORE THE COURT

Frank T. Mabley, an individual,
Greenstein, Mabley & Wall, LLC, a private business
organization and enterprise,
Margaret Fuller Corneille, an individual,
Carl Baer, an individual,
Isabel Gomez, an individual,
Richard H. Kyle, an individual,
Frank B. Wilderson, Jr., an individual,
Joseph R. Cade, an individual,
John D. Kelly, an individual,
Catherine M. Warrick, an individual,
State Board of Law Examiners, a state agency
And an enterprise.

ADDITIONAL PARTES TO ORIGINAL PROCEEDING WHO NO LONGER HAVE AN INTEREST IN THE OUTCOME OF THE PETITION FOR CERTIORARI

Gordon W. Shumaker, an individual,
Salvador M. Rosas, an individual,
Bertrand Poritsky, an individual,
Hyam Segell, an individual,
Mary P. Walbran, an individual.

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OPINIONS BELOW

The judgment and opinion of the court of appeals (App., *infra*, A-1 to A-2), is unpublished. The judgment of the district court (App., *infra*, A-3) and memorandum opinion and order (App., *infra*, A-4 to A-14) are unpublished.

STATEMENT OF JURISDICTION

The court of appeal's judgment was entered on September 1, 2005. A timely application for extension of time to file petition for writ of certiorari was granted on Nov. 22, 2005 by Justice Thomas, extending the time to and including Dec. 30, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. section 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The due process and equal protection clause of the Constitution provide: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. Amendment XIV, Section I.

The relevant portions of 42 USC 1983 and 18 USC 1964 (a) and (c) are reproduced at App, *infra*, A-46.

STATEMENT

This case raises recurring questions relating to the due process and equal protection clauses of the Constitution as well as 18 USC 1964 (a) & (c) and 42 USC 1983. A summary of the pertinent facts are stated below.

1. Petitioner applied to take the July, 1985 Bar Exam in the State of Minnesota, took the 1985 Bar Exam and was unsuccessful on it.

2. Petitioner has not filled out any application nor paid any filing fee to take any Bar Exam subsequent to the July, 1985 Bar Exam.

3. Rule 100E of the State Board of Law Examiners for Admission to the Bar requires any applicant who was unsuccessful on a prior Bar Examination to file a new application and to pay the proper fee as required by Rule 105. (Rules of the Supreme Court and State Board of Law Examiners for Admission to the Bar as amended Oct. 1, 1986, Dec. 23, 1986 and Jan. 20, 1987).

4. Rule 104 authorizes the Bar Board to conduct a hearing for background investigation only upon those who have filed an application and paid the filing fee as required by Rule III and Rule 100. (Rules of the Supreme Court and State Board of Law Examiners for Admission to the Bar as amended Oct. 1, 1986, Dec. 23, 1986 and Jan. 20, 1987).

5. On March 6, 1987, Bar Board director Margaret Fuller Corneille notified petitioner that the Board of Law Examiners has scheduled a formal hearing for April 9, 1987 "on your application" pursuant to Rule 104.

6. The Bar Board conducted it's first character investigation hearing on petitioner on April 9, 1987 and conducted a second character investigation hearing on April 25, 1988.

7. The Bar Board issued it's Determination (Order) on petitioner on April 4, 1989 where they stated that petitioner "... should not be allowed to take the Bar Examination and/or be admitted to the Bar of the State of Minnesota".

8. On December 23, 2003, Bar Board director Margaret Fuller Corneille wrote to petitioner and stated that "Our files contain no Bar application other than that which you filed for the July 1985 Bar Exam". (App. *Infra*, A-45).

9. On December 29, 2003, petitioner brought a motion in front of the Minnesota Supreme Court to vacate and strike from the record the April 9, 1987 and April 25, 1988 hearings and April 4, 1989 Determination (Order) of the Bar Board on the basis of Minnesota Rule of Civil Procedure 60.02 (d) (Void Judgment). Petitioner filed an accompanying Memorandum of Law with his motion.

10. On January 29, 2004, the Minnesota Supreme Court, per the Honorable Paul H. Anderson, denied petitioner's motion to vacate.

11. Petitioners brought a RICO and 42 USC 1983 cause of action against the State Board of Law Examiners, its director and respondent Mabley, alleging that they acted under color of law and deprived Petitioners of constitutionally protected rights. (App, *infra*, A-18).

12. Petitioners brought a motion to strike and an application for default judgment, which were denied by the district court. (App, *infra*, A-15).

13. Respondents brought motions to dismiss, which were granted by the district court (App. *Infra*, A-4).

14. Respondents appealed to 8th. Cir. Court of Appeals, where 8th. Cir. affirmed. (App., *infra*, A-1).

REASONS FOR GRANTING THE PETITION

The Minnesota Supreme Court excluded Petitioner David from the practice of law in a manner and for reasons that contravene the Due Process and Equal Protection Clauses of the Fourteenth Amendment. A State cannot do this, under *Dent v. West Virginia*, 129 U.S. 114; *Slochower v. Board of Education*, 350 U.S. 551; *Wieman v. Updegraff*, 344 U.S. 183. The basis for Petitioners' RICO and 42 USC 1983 causes of action stem from a denial of that right by the Minnesota Supreme Court and the Minnesota State Board of Law Examiners. Since Petitioners' causes of action involve a

bar admission claim which was made in a state court and a denial of that right was made by judicial order, it is a case which may be reviewable under Article III of the Constitution when federal questions are raised and proper steps taken to that end, in this Court. *In Re Summers*, 325 U.S. 561, 567-569 (1945).

Petitioner David currently has a Petition for a Writ of Mandamus before this Court (Case No. 05-732) where he is petitioning the Court to compel the Minnesota Supreme Court to vacate a void determination of the Minnesota State Board of Law Examiners. Petitioners explain in more detail in the sections that follow why this Court should grant them certiorari.

I. The Minnesota Supreme Court failed to vacate a void determination of the State Board of Law Examiners.

Petitioner David brought a motion in front of the Minnesota Supreme Court to have them vacate and expunge from the record the 2 character investigation hearings and determination (Order) that the State Board of Law Examiners issued on him on the grounds that the State Board of Law Examiners lacked subject matter jurisdiction. The Minnesota Supreme Court denied this motion. Subject matter jurisdiction is conferred on the State Board of Law Examiners only after a person becomes an "applicant" for taking the bar exam by 1) filing an application; and, 2) paying the filing fee. Petitioner David did neither, so he was a private citizen where the State Board of Law Examiners had usurped their authority and deprived him of constitutionally protected rights. The actions of the State Board of Law Examiners in conducting 2 character investigation hearings and issuing a determination on David, where he was not an "applicant" to take the bar exam, was clearly discriminatory. The State Board of Law Examiners had no jurisdiction to conduct any hearings or issue any